

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALONZO REED,

Petitioner,

No. CIV S-05-0570 FCD GGH P

vs.

SCOTT KERNAN, Warden,

Respondent.

ORDER

Petitioner, proceeding pro se, has filed a petition pursuant to 28 U.S.C. §2254. Petitioner challenges a Rules Violation Report (RVR) hearing at High Desert State Prison on March 18, 2004, in which he was found guilty for refusing to sign a conditions of parole form, a condition of which required that he register as a sex offender, and, according to petitioner, at which he was assessed 90 days.<sup>1</sup> Petition, p. 3. Petitioner avers that he had served his entire eight-year sentence, with no half-time credit, as of March 2, 2004, for possession of a firearm with an enhancement for serving a prior prison term. Petition, p. 5; traverse, p. 2.

<sup>1</sup> Respondent's Exhibit C, however, indicates that petitioner was not assessed any loss of time credits at the March 18, 2004 RVR hearing. Answer, pp. 2-5, Exh. C. Petitioner was evidently presented with a Notice of Sex Offender Registration Requirement, which he refused to sign on February 5, 2004, for which he was issued an RVR and assessed a 30 day credit loss on February 25, 2004. Answer, pp. 2, 5, Exh. B.

1           Petitioner further alleges that the March 18, 2004 RVR formed the basis for his  
2 referral to the Board of Prison Terms for an April 12, 2004 parole revocation hearing, which he  
3 also challenges herein, at which he claims the evidence was insufficient to warrant his being  
4 required to register as a sex offender; at that hearing a document, the March 18, 2004 RVR  
5 report, was introduced which resulted in a six month parole violation for petitioner. Id., p. 6.  
6 This violation kept petitioner from paroling on March 2, 2004. Id.

7           Pending before the court is petitioner's motion to strike from respondent's answer,  
8 Exhibit A, pages 1 through 10 of petitioner's criminal history, as well as that portion of Exhibit  
9 E, a copy of the September 30, 2004 revocation hearing disposition, that states that he was  
10 provided with a copy of the conviction(s) for which he was required to register as a sex offender.

11           Petitioner contends that Exhibit A is not authenticated and is irrelevant to the  
12 Rules Violation Report proceedings and parole revocation at issue, although he does not assert  
13 that the criminal history recounted therein is inaccurate. In this case, the court would only  
14 consider petitioner's motion to strike on the ground that the criminal history is not authenticated  
15 if petitioner specifically identified and alleged incorrect entries.

16           Petitioner states that his criminal history was not presented at, or a part of, the  
17 proceedings he is challenging. Whether or not petitioner was convicted of, for example, indecent  
18 exposure is a separate question from whether or not he was, in fact, presented with evidence of  
19 such a conviction at a hearing. Should the court consider Exhibit A, it will be doing so only for  
20 the purpose of ascertaining whether or not petitioner has been convicted of offenses for which his  
21 registration as a sex offender is or could be required under the relevant state statute. The court  
22 will not grant petitioner's motion to strike any portion of this exhibit.

23           As to a portion of Exhibit E, petitioner does aver that the representation that he  
24 received a copy of the conviction(s) of indecent exposure (which apparently formed the basis of  
25 the requirement that he register as a sex offender) alleged is inaccurate. However, petitioner  
26 makes eminently clear in his traverse that he wholly disputes that he was provided with such a

1 conviction at his parole revocation hearing,<sup>2</sup> which conviction, moreover, he maintains is non-  
2 existent. Traverse, pp. 4-5. Thus, striking any portion of the exhibit at this time appears to be  
3 both premature and unnecessary.

4 Petitioner concludes his motion for the above-described exhibits to be stricken  
5 from the record with a wholly conflicting request, that the court take judicial notice of those very  
6 exhibits. Petitioner's motion will be denied.

7 Accordingly, IT IS ORDERED that petitioner's July 26, 2005 motion to strike any  
8 portion of Exhibits A and E from the answer is denied.

9 DATED: 2/22/06

10 /s/ Gregory G. Hollows

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12 GREGORY G. HOLLOWS  
13 UNITED STATES MAGISTRATE JUDGE

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25 <sup>2</sup> It appears that this exhibit may be relevant only to a subsequent parole revocation  
26 hearing, which occurred on September 30, 2004, and which is not at issue herein; the court will  
only consider relevant exhibits, but will not strike an exhibit prior to reaching the merits of  
petitioner's claims.